UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COMMUNITY HEALTH SERVICES, INC.

and **Case No. 01-CA-191633**

AMERICAN FEDERATION OF TEACHERS, AFT CONNECTICUT, AFL-CIO

John A. McGrath, Esq.* and *Thomas A. Quigley, for the General Counsel.
Hugh F. Murray, III, Esq. (McCarter & English, LLP), for the Respondent.
Michael Doyle, Esq. (Ferguson, Doyle & Chester, PC), for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELIZABETH M. TAFE, Administrative Law Judge. This case was tried in Hartford, Connecticut, on November 9, 13, and 14, and December 14, 2017. The American Federation of Teachers, AFT Connecticut, AFL−CIO (Charging Party or Union) filed the charge on January 23, 2017,[1] amended on May 31, and the General Counsel issued the complaint on July 27.[2] The complaint alleges that Community Health Services, Inc. (Respondent or CHS) violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union before implementing the suspension and discharge of employee Dirgni Baker, pursuant to the Board's holding in *Total Security Mgmt.*, 364 NLRB No. 106 (2016), which generally requires that employers bargain with newly elected unions during the period between the certification or recognition of the union and the achievement of a first collective-bargaining agreement about proposed serious, discretionary discipline before implementing the discipline. The complaint

[1] All dates are in 2017 unless otherwise indicated.

[2] On October 12, 2017, another charge that initially had been consolidated with this case, 01−CA−190632 was severed from the complaint and withdrawn by the Regional Director before the hearing opened. (GC Exh. 1(m).) The consolidated complaint was not reissued, but complaint pars. 1(a), 1(b), 9, and 15 were expressly withdrawn. Id. To avoid confusion, I continue to refer to remaining complaint paragraphs as originally numbered. (See GC Exh. 1(e).)

includes a compliance specification, which further sets forth the General Counsel's backpay calculations up to the hearing date. Although the Respondent agrees that this case falls within the circumstances about which *Total Security Management* applies, the Respondent denies any wrongdoing, arguing that it had no obligation to bargain about the implemented suspension and that it did bargain about the discharge. The Respondent further argues that Baker is not entitled to reinstatement or backpay because she was terminated for cause and/or that backpay should be limited because the Union failed to respond to its offer to bargain two months after the discharge or because Baker's search for work was insufficient.[3] The parties reached agreement on a CBA covering the MA Unit in about July 2017, after the material facts in this case occurred.

The parties were given a full opportunity to participate in the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, and to file briefs. On the entire record, including my observations of the demeanor of the witnesses,[4] and after carefully considering the posthearing briefs filed by the Respondent and the General Counsel, I make the following findings, conclusions, and recommendations.

As discussed in detail below, I find merit to the complaint allegations that the Respondent violated Section 8(a)(5) and (1) by failing to give prior notice and opportunity to bargain before imposing serious discipline on Dirgni Baker, and by failing to bargain in good faith with the Union regarding Baker's discharge.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a federally qualified health center located in Hartford, Connecticut, is engaged in the business of providing primary health care to people in Hartford, Connecticut, and surrounding areas. At its Hartford, Connecticut location, the Respondent annually derives gross revenues in excess of $250,000, and purchases and receives goods valued in excess of $50,000. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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[3] The Respondent also asserts that *Total Security Management*, above, was wrongly decided. I am obliged to and shall follow the Board's precedent.

[4] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on the highlighted evidence but upon my review and consideration of the entire record. My findings of fact encompass the credible testimony, evidence presented, and logical inferences from the evidence. The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303−305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Factual Background

Pursuant to a Board-conducted election held on June 30, 2016, the Union was certified on July 8, 2016, as the exclusive collective-bargaining representative of the following employees (the MA Unit):

> All full-time and regular part-time Dental Assistants and Medical Assistants employed at the Employer's 500 Albany Ave., Hartford, Connecticut facility; but excluding all other employees, Medical Assistant Receptionists, Dental Assistant Receptionists, Doctors, Clinicians, clerical and other non-professionals, and guards, professional employees, and supervisors as defined in the Act.

The MA Unit is a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act, and at all material times since July 8, 2016, the Union has been the exclusive representative of the MA Unit pursuant to Section 9(a) of the Act.

The Union also represents a certified bargaining unit of professional, State-licensed clinical employees consisting of medical doctors, therapists, social workers, nurses, LPNs, dental hygienists, dentists, and a dietician (the Providers Unit). The Providers Unit had been recognized by the Respondent and covered by a collective-bargaining agreement (CBA) before the MA Unit election. The Respondent's and Union's negotiations for a successor CBA covering the Providers Unit overlapped with their negotiations for an initial CBA covering the MA Unit.

The parties stipulated that, prior to July 2017, the Respondent and the Union had not yet agreed to an initial collective-bargaining agreement for the MA Unit, and that the Respondent maintained a "discretionary" disciplinary system as the term is used in *Total Security Management,* 364 NLRB No. 106 (2016), i.e., that the Respondent exercised discretion to decide on a case-by-case basis under what circumstances discipline might or might not be imposed, as well as the kind and severity of discipline, if any, to be imposed. (Jt. Exh. 1.)

Ole Hermanson, who testified at trial, was a Union field representative from about July 2016 to July 2017.[5] Before that, he was an organizer for the Union for about 13 years. Hermanson worked as an organizer of the MA Unit employees, and then became the field representative following the election in the MA Unit, for which his responsibilities included representing employees in both units. He was the chief spokesperson for the Union in negotiations for the Providers Unit's successor contract and for the MA Unit's first contract.

The Respondent admits, and I find, that Genea Bell, Chief Legal and Human Resources (HR) Officer, Debora Evans, Director of HR, and Anne Howley, Nurse Manager, are Respondent's supervisors within the meaning of Section 2(11) of the Act, and Respondent's agents within the meaning of Section 2(13) of the Act. Genea Bell, who testified at trial, has

[5] Beginning July 10, 2017, Hermanson has worked for a different union, the Massachusetts Nurses Association, as a Director of Strategic Campaigns.

served as both in-house legal counsel and HR officer since about Fall 2014. The HR Director reports to Bell, and Bell sits on the upper management team, which includes the chief medical officer (CMO), chief financial officer (CFO), chief quality officer, and the chief executive officer (CEO). Bell is a licensed attorney who had about 7 years of prior experience as an attorney in the field of labor and employment law before joining CHS. Anne Howley, who also testified at trial, has been Nurse Manager of Adult Medicine since about May, 2015, when she began at the Respondent. Howley oversees the medical assistants, among other duties. In January 2017, the practice manager position was open, so Howley also oversaw the receptionists. Joan Ashman has been the medical assistant supervisor in Adult Medicine for about 8 years. Ashman coordinates scheduling and some attendance issues of medical assistants. Ashman reports to Howley. Mauricio Montezuma, M.D., is the clinical director of the Adult Medicine Department. Clinical directors, including Montezuma, report to the CMO.

The Respondent is federally qualified health center organized as a private, nonprofit corporation under federal statutes to provide safety net healthcare services, in the form of comprehensive primary and preventive care to individuals on Medicaid, and uninsured or underinsured individuals in the Hartford area. The Respondent has five separate clinical departments including the Adult Medicine Department, which serves both prescheduled patients and a walk-in clinic.[6]

The alleged discriminatee, Dirgni Baker, is a medical assistant who worked for the Respondent in the Adult Medicine Department from October 14, 2013, until she was sent home by Nurse Manager Howley on January 3 and was discharged, effective January 18, 2017. Baker had worked in clerical and customer service positions for 10 years before obtaining a medical assistant's diploma and beginning her career at the Respondent. Ashman, the medical assistant supervisor, supervised Baker from the beginning until Baker was discharged. According to Union representative Hermanson, Baker was very influential in the organizing campaign that led to the election and certification of the MA Unit. Baker then also served on the Union's bargaining team to negotiate the first contract.[7]

The Respondent's witnesses provided explanations for the reasons for Baker's discharge that, in general, reflect its narrative that Baker had a history of performance and conduct problems, some related to her work performance, but others related to her communication style or perceived failure to interact with colleagues in a manner agreeable to others. As described in detail below Baker was removed from the workplace on January 3, placed on administrative

[6] In addition to the Adult Medicine Department, CHS has the following departments: Pediatric and Adolescent, Women's Health, Behavioral Health, and Dental. Adult Medicine is the largest department.

[7] The Charging Party initially also alleged that Baker's discharge was motivated by antiunion animus, but later amended the charge to allege only the 8(a)(5) failure to bargain allegations. Before the hearing opened, the Charging Party withdrew other 8(a)(5) and (1) allegations that included an allegation of a coercive statement, and the Region amended the complaint to withdraw the related complaint allegations associated with Case 01−CA−190632. The question of the Respondent's motive in suspending and discharging Baker remains relevant, however, due to the questions of whether the Respondent bargained in good faith with the Union and whether the Respondent's suspension and discharge of Baker was shown to be "for cause."

leave on January 4, and discharged effective January 18, following a short verbal exchange with a coworker, which the Respondent determined was unprofessional and rude.

The January 3 Incident for which Baker was Sent Home.

The incident on January 3 that led to Baker's discharge involved a coworker's interpretation of Baker's tone or appropriateness of a short statement made by Baker, in an otherwise routine discussion about a disagreement between the provider with whom Baker was working, Dr. Salehi, and that coworker, Kylie O'Donnell. Baker testified that, on January 3 in the afternoon, Dr. Salehi, a provider with whom she was regularly assigned to work, approached her and informed her that a patient had been scheduled for an appointment with Salehi at 4:30 p.m., which Salehi believed was an error. Salehi explained that she was supposed to have the slot from 4:30 to 5:30 p.m. that day scheduled for "administrative time." Administrative time is time that the providers are allotted to perform many clinical-related tasks other than seeing patients (e.g., calling labs to obtain test results, doing paperwork, serving in other professional "citizen" roles, such as on peer committees, etc.). The scheduling of administrative time and provider productivity had been points of contention between management and the providers. Dr. Salehi told Baker that she had discussed this issue with Dr. Montezuma, the medical director. As a medical assistant, one of Baker's roles was to go to the front, reception area, find patients, and bring patients back to the clinical area. Dr. Salehi asked Baker to have the patient rescheduled. Apparently, because Dr. Salehi was relatively new to the Respondent, all of her patients at that time were assigned through the walk-in clinic, which meant that the receptionist entered their names into the assigned appointment slots in the computerized schedule during the workday.

Medical assistants occasionally assist providers with scheduling and rescheduling patients, and Baker had done so for Salehi in the past. To accomplish this rescheduling task, Baker proceeded to the walk-in reception area, and spoke to the receptionist, Alexandra Santiago.[8] Baker relayed Salehi's request to have the patient rescheduled from the 4:30 slot, as Salehi believed it was supposed to be administrative time. Consistent with an ongoing issue regarding scheduling and providers' administrative time, Santiago responded by saying something like, "Oh no, not again." (Tr. at 228.)

At about that time, Kylie O'Donnell and Kim Tran, whose shared office was adjacent to the reception areas, were walking by.[9] The two held the titles, Business Improvement Quality Coordinators. One of O'Donnell's roles had been to work with technicians or outside consultants to assist in the development and implementation of enhancements to the computer scheduling system, and, at that time, O'Donnell and Tran had some role or responsibility related to scheduling, although the definition of that role or responsibility is unclear on the record. O'Donnell and Tran had a role in the maintenance or upgrading of the design of the forms used

[8] No one has alleged that Baker's inquiry on Dr. Salehi's behalf was inappropriate. In fact, Howley had counseled and trained medical assistants to step up and assist coworkers as team member in order to facilitate "patient throughput."

[9] The Adult Medicine Department had two adjacent waiting areas, one for scheduled patients and the other for walk-in patients, although patients regularly sat on either side, so a medical assistant might need to check either side to find a patient.

within the computerized scheduling system used by the receptionists, medical assistants, and providers in Adult Medicine, and played a role in assisting Howley in using the automation system in formatting and generating personnel documents, including Employee Warning Notices. O'Donnell was not a member of a bargaining unit or shown to be a supervisor on this record.[10] She generally received her assignments from the Chief Financial Officer, but also sometimes reported to Dr. Montezuma in Adult Medicine. However, in January, 2017, O'Donnell and Tran were "kind of deployed to [A]dult [M]edicine to help keep them organized and try to keep things together" in the absence of an office manager, according to O'Donnell. (Tr. at 452.) This began about when Howley was hired, in about May 2015. O'Donnell testified at the hearing. Tran was not called to testify.

Santiago asked for O'Donnell and Tran's assistance by gesturing toward them, and O'Donnell walked to the receptionist desk. O'Donnell testified that she and Tran had been predisposed to avoid Baker, as they believed Baker was difficult to work with. O'Donnell believed she was doing Tran a favor by taking "the hit," anticipating that dealing with Baker would be upsetting to Tran or otherwise a problem. Baker and Santiago explained to O'Donnell that Salehi was upset that a patient had been scheduled at 4:30, when she understood she was to have administrative time, and that she needed the patient moved to make room for her administrative time. O'Donnell (the quality coordinator, not shown to be supervisory) stated to Baker (the medical assistant) and Santiago (the receptionist) that Salehi's (the medical doctor's) administrative time was not scheduled until 5 p.m., that there was nothing wrong with the schedule, and that the patient could not be moved. Upon learning this, Baker returned to the clinical area and explained to Dr. Salehi that O'Donnell had told her that Salehi's administrative time was only 30 minutes from 5 to 5:30 p.m., and that the patient could not be moved. Salehi disagreed, and told Baker she would talk to O'Donnell. Baker escorted Salehi to the reception area, where O'Donnell, remained conversing with Santiago.

Because Dr. Salehi did not have her door access card/key, Baker escorted her through the door to where O'Donnell and Santiago were. They walked by the patient waiting area, and then entered the "back" area where the receptionist sat. There was a window between the reception area and the waiting area, and for at least part of the discussion, Baker stood holding the door ajar, apparently because Salehi did not have her access card with her. Upon reaching the reception area door and swiping in, Baker said O'Donnell's first name to get her attention, as O'Donnell had her back to Baker. O'Donnell responded, "What?" Baker testified that she then responded to O'Donnell, after raising and holding her hand to her chest, saying "'Yes' is the answer, and 'what' is a question."[11] She then said to O'Donnell, "Here's Dr. Salehi. Tell her

[10] O'Donnell testified that she initially joined CHS four years earlier as an AmeriCorps volunteer providing outreach services. She was asked to stay on at CHS by the CFO afterwards, initially to provide "process improvement." O'Donnell has no formal management training. She received a Bachelor's of Science degree in "pre-med" and had work experience with a health clinic before joining AmeriCorps.

[11] I grant the General Counsel's unopposed motion in his brief to correct the transcript at 229:18 to read "Yes is the answer" rather than "Yes isn't the answer."(GC Br. at 10, fn. 9.) It is clear from the context, including Baker's intonation at the hearing, that either she testified that she stated that "Yes is the answer" and the transcript is incorrect, or that she misspoke while testifying and meant to state "Yes is the answer." I further find that the slight variances described by different witnesses about what actual words were said are immaterial. Baker responded in a way that reflected that she experienced O'Donnell's

what you just told me." O'Donnell turned to speak to Salehi. Baker left the area, returning to her duties, which, at that time, involved preparing mailings to patients.

O'Donnell testified that when Baker returned with Salehi, O'Donnell was talking to Santiago, and when Baker said her name, O'Donnell replied, "what's up?" She further testified:

> Thinking that Dirgni [Baker] had gone and talked to Dr. Salehi about whatever had happened or whatever I had said. And she had said, don't say what to me. That's not a yes. And I said, okay. Well, what's going on? Like, what – how can I help you further, kind of. (Tr. at 229.)

O'Donnell testified that Baker used an insistent and demanding tone in this brief exchange, which was "like you need to do what I'm telling you to do because I'm telling you to do it." (Tr. at 458−459.) She further admitted on cross examination that Baker did not raise her voice, yell, curse, or use insulting or derogatory language in this brief exchange. (Tr. at 456.) She further admitted that Dr. Salehi used a "similar tone" in her discussion with Salehi that followed, and that the entire discussion was frustrating.

Santiago testified at the hearing, but did not recall the exchange between Baker and O'Donnell about the scheduling of a patient, although she did recall a discussion about the scheduling disagreement between O'Donnell and Salehi. (See Tr. at 494−497.) Although she testified that she really didn't remember much, she also testified that Baker spoke in a "rude way" and that O'Donnell spoke in a "calmly matter [sic]." (Tr. at 494.) She testified that she approached Howley about the incident, and Howley asked her to write it up, which she did. She did not recall making any changes to her written statement or anyone else making changes. She also did not appear to recall the chronology of the interactions, i.e., that Baker first spoke to her and then left and went to the clinical area, or that Salehi and Baker then returned together.

There are no other reliable, unedited accounts of this incident by witnesses who were present. To the extent the versions of events vary, I credit Baker's version. Baker testified in a forthright manner, appeared to thoughtfully answer questions from all parties in a similar, straight forward manner. O'Donnell, in comparison, spoke in a defensive manner, speaking very quickly at times, appearing determined to convince, rather than in a manner that reflected an attempt to simply report the facts. And, as with the excerpt above, O'Donnell often testified by means of explanation or by characterizing the facts, rather than in a manner that reflected that she actually recalled the precise words or actions she observed. I have also considered that O'Donnell admitted that she and Tran had concluded from past experience that Baker was hard to deal with to the extent that she tried to avoid Baker, which likely influenced her interpretation of Baker's statement and her reaction to Baker. Santiago's testimony was internally inconsistent, and she qualified her testimony to reflect that she did not remember much. (Tr. at 494.) When she provided details, they seemed to follow the Respondent's narrative that Baker had been "rude," but lacked memory of the specifics of what was said and, in other ways, was inconsistent with the other testimony. Santiago's statements about what was said between Baker and

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response to her as abrupt or inappropriate.

O'Donnell appeared to have been attempts to recall something she had memorized, rather than something she had actually had a present memory about.

As discussed below, I give little credence to the records attached to the discharge letter sent to Baker that purported to document the January 3 incident. These records appear to have been rewritten or edited following input from Nurse Manager Howley, who did not witness the conversation, *after* Howley had already decided that the above incident warranted sending Baker home immediately. Howley's decision was made without consulting legal counsel or HR. They contain numerous inconsistencies and edited content, some of which was written or changed days after the incident. All of the above causes me to find them to be unreliable as recordings of witness memories about what the witnesses actually did or observed.

Following this brief exchange between Baker and O'Donnell, O'Donnell and Salehi discussed the scheduling disagreement at the reception area. O'Donnell testified that Salehi insisted that she move the patient and stated that she had an email from Dr. Montezuma confirming that the time was supposed to be her administrative time. O'Donnell refused to change the schedule until Dr. Salehi showed her the email. Ultimately, according to O'Donnell, the patient scheduled at 4:30 p.m. did not show any way. Also, according to O'Donnell, she never received a copy of the email from Dr. Montezuma supporting Dr. Salehi's claim that Dr. Montezuma had authorized the time to be administrative time. As noted above, O'Donnell characterized Salehi's tone in this more substantive discussion as similar to how she characterized Baker's tone in the brief exchange with O'Donnell, i.e., demanding and insistent.

There is no evidence in the record that Dr. Salehi, O'Donnell, or Santiago, were disciplined in any way, or that their statements to each other or to Baker were construed as unprofessional or rude by management, or undertaken in an inappropriate locale, despite the conversations occurring in the exact same reception area, near, but not directly within, the patient waiting area. Also, as it is unclear on this record what, if any, actual authority O'Donnell had to reject a doctor's request for a patient to be rescheduled, or whether she was entitled to demand an email from Dr. Montezuma to accommodate Dr. Salehi's request. In context, it is curious that only Baker's brief comment was labeled as having been made in a "demanding," or "insistent" tone and demeanor. I believe it is significant that the record does not contain Dr. Salehi's perspective. Salehi was the only witness to the incident who was outside Howley's authority. Further, although it stands to reason that there may have been some patients or family members of patients in the waiting area, as that is the purpose of a waiting area, there is no reliable, direct evidence that patients or family members were in the waiting area at the time of these discussions about Dr. Salehi's schedule.

Howley's Initial Response to the January 3 Incident and Decision to Send Baker Home

Following this discussion with Dr. Salehi in which Salehi requested, and O'Donnell denied, that a patient be moved to accommodate the doctor's request, O'Donnell felt frustrated or upset. To "cool off," she "took a lap" around the Adult Medicine Department, which she admitted she does on occasion to manage frustration, rather than "stewing" in her office. (Tr. at 458.) Upon completing her lap(s) and returning to her office, she encountered Nurse Manager Howley, who asked her what was wrong. At first O'Donnell denied anything was wrong. On

Howley's insistence, according to O'Donnell, she told Howley about the discussions with Baker and Salehi. According to O'Donnell:

> I said it was nothing. I kind of -- she was like, no, you seem upset. Like, tell me what's going on. So, I explained the situation to her, and she was kind of like not again, so to speak, and asked me to write it up. (Tr. at 459.)

Although she was unable to recall Howley's exact words, Howley asked O'Donnell to write up the incident in as much detail as she could. O'Donnell testified that she also searched for the email mentioned by Salehi that Salehi believed authorized her administrative time. Although, at first O'Donnell's frustration was obviously motivated at least in part by the scheduling disagreement, as evidenced in part by her confident report at the hearing that she never saw any email from Dr. Montezuma to support Dr. Salehi's claim regarding the scheduling dispute, somehow, in her verbal report to Howley and in Howley's understanding, O'Donnell's frustration from the incident was primarily focused on the brief exchange between she and Baker.

Apparently, Howley found the brief statement by Baker so troubling that she decided to investigate what had happened. She spoke to Santiago and Tran about what had happened and asked each to provide a written statement. She also spoke to Dr. Salehi about the scheduling issue, but does not recall inquiring about what happened between O'Donnell and Baker, and she did not ask Salehi to provide a statement. She then spoke briefly with Baker. When asked if she thought she had been rude, Baker explained that she did not believe she had been rude to O'Donnell. Howley concluded that Baker had been rude. She testified that she told Baker that she "[was] consistently unprofessional," and that her "demeanor and tone" were "unacceptable." (Tr. at 315.) Howley told Baker to clock out, go home, and don't come back until you hear from HR. Howley took the mail that Baker was processing without permitting Baker to finish her tasks for the day.

After sending Baker home, Howley spoke to Bell. Howley admitted that Bell was upset upon learning that Baker had been sent home under the circumstances. She admittedly did not consult Bell or HR before sending Baker home.

Baker called her Union representative, Hermanson, upon being sent home, and told him that Howley asked her to provide a statement about the January 3 incident. Hermanson called Bell and told her that he wanted to be present at any investigatory interview, as her *Weingarten* representative.[12] They scheduled a time for the interview on January 10.

<u>"Investigation" and Preparation of Paperwork to Support Baker's Discharge.</u>

[12] See generally, *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), upholding the Board's determination that employees have a right to union representation, upon request, at investigatory interviews that reasonably could be anticipated to lead to discipline.

Howley engaged in a brief investigation to confirm what she had heard from O'Donnell had happened. She then sent Baker home. The Respondent did not present any evidence to support a finding that it was necessary, at that time, to send Baker home. There was no imminent threat or danger, or other extraordinary circumstances, and none of the other participants in this conversation about Dr. Salehi's schedule were sent home. At trial, Howley called Baker's statement to O'Donnell "egregious" and "toxic" and described that Baker had a "toxic" personality, which tended to infect the department with "toxicity." The Respondent's focus was clearly on Baker.

Howley asked O'Donnell, Tran, Santiago, and Baker to submit written statements about what happened. Over the next week, Howley collected the statements and prepared them and other paperwork related to Baker's work history, and Bell began preparing Baker's Employee Warning Notice, based on Howley's input. The statements were revised after Howley read them. The email chains and chronology of communications and events also indicates that someone, likely Howley, added typed names to the documents, as signatures, and dated the documents. The added dates did not reflect the date of the revisions, but prior dates, purported to be closer in time to the incident. The final documents did not reflect that they had been revised, or by whom. The changes appear to have been to bolster the otherwise unsubstantiated proposition that patients or family members of patients were in the waiting area, implying they may have heard the discussion. The changes also appear to attempt to bolster the conclusion that Baker's statement or her demeanor had been rude or unprofessional. Either O'Donnell or Tran, or perhaps both, assisted Howley with preparing the formatting of some of the documents.

On January 9, anticipating the January 10 investigatory meeting with Baker, Bell emailed Howley twice, indicating that she was in the process of drafting Baker's Employee Warning Notice, and required Howley to provide a statement. Bell also still required Baker's prior discipline documents from Howley, including the October incident for which there was no discipline issued. (GC Exh. 31.) Howley responded to these emails on January 13, after the January 10 meeting. (GC Exhs. 32, 33, and 34.)

The January 10 *Weingarten* Meeting and Subsequent Discussion.

Baker attended an interview with Bell on January 10. Hermanson accompanied Baker as her representative. Baker provided a written statement to Bell, which she understood she had been requested to do, although Bell did not read the statement in this meeting. Bell asked Baker a series of questions she had prepared in advance; using a laptop computer, Bell took notes while Baker answered her questions. Bell updated those notes to flesh them out, as is her practice, shortly after the meeting. Bell does not appear to have asked Baker whether patients were actually present during the interaction. This interview lasted about 30 to 40 minutes. Then Baker left the room, and Hermanson and Bell remained. Baker testified that, following the meeting, she still expected to be put back to work.

Bell and Hermanson spoke for about 10 to 15 minutes after Baker left the room. No one else was in the room. Hermanson told Bell that he did not know where things were headed, but thought that they should be able to solve the controversy, because what happened "did not seem to be that big of an event." (Tr. at 23.) Although Bell agreed that the January 3 incident was not

itself a big deal, she noted that Baker had a problematic work history. Hermanson responded that, if some kind of response was required, the Union was willing to discuss discipline, and perhaps a referral to the Employee Assistance Program (EAP) counseling or other training. Bell explained that Baker was already on a final warning and had a complicated work history. Hermanson testified that he explained that he believed that, if their actions were reviewed by an arbitrator in the future, an arbitrator would give more weight to something that the Union had agreed to compared to disciplinary history that could not have been grieved by the Union.[13] Bell responded that she still had more investigating to do and that Baker's discipline was not ultimately her decision to make. Bell admitted that she repeated several time to Hermanson in this discussion that the final decision was not hers to make, but would be Annie's [Howley's] decision.

Bell told Hermanson that she expected to wrap up the investigation by the end of the week, and that she would get back to him then. Hermanson told her that if the Respondent were going to issue any discipline, then the Union demanded to bargain over it. According to Hermanson, Bell then said, "if we are going to have to bargain over it, then I suppose I should take the most extreme position." (Tr. at 24.) Hermanson responded that he did not believe that was the best way to bargain but she should do what she needs to do. They agreed to talk by the end of the week. It is undisputed that Bell never explicitly told Hermanson in this meeting that the Respondent either planned or proposed to discharge Baker. I do not credit Bell's testimony that she told Hermanson that this incident "was a straw that breaks the camel's back issue." Hermanson would likely have remembered a colorful idiom like that, and he testified credibly that he did not recall her saying that. Moreover, Bell failed to include that idiom in her sworn statement to the Board agent during the investigation, despite having carefully reviewed and edited the statement, with legal counsel. That said, it is undisputed that Bell made clear to Hermanson that Baker's work history was problematic and contained a final warning, that she believed more investigation needed to be done, that she expected to be done within a week, and that the particular January 3 incident was not, itself, a big deal. Bell admitted to Hermanson that she had not reviewed Baker's disciplinary history at the time of their meeting. Hermanson admittedly understood from Bell's statements at the meeting that discipline of some kind "was a possibility and likelihood." (Tr. at 49.)

No additional meetings or discussions were held between the Union and the Respondent about Baker's potential discipline before Baker was given her discharge notice on January 18. The Union was not informed in advance of this discharge notice. The Respondent never provided the Union with a proposal to discharge or otherwise discipline Baker before implementing this discharge.

Continued Preparation of Paperwork and Baker's Discharge Notification.

Bell emailed Hermanson on Friday, January 13 to advise him that she would not complete the investigation as quickly as she had thought, and that she would try to get back to

[13] Bell did not recall with specificity this statement, but did recall that Hermanson said something about arbitration, which she did not entirely understand. In any case, this testimony fails to establish that either Hermanson or Bell understood their conversation to amount to bargaining about the discipline.

him by the following Tuesday, January 17. On January 17, Hermanson emailed Bell seeking an update on the investigation, noting that Baker was eager to return to work. On January 18, Bell emailed by "reply all" to Hermanson and Baker, an attached letter discharging Baker, and a form notice entitled "Employee Warning Notice" with supporting documents and administrative documents related to the discharge, such as payroll or benefits information attached to the email. (GC Exhs. 5, 6, and 7.)

The email from Bell to Hermanson and Baker stated:

> Good Afternoon Ole and Dirgni,
>
> Following review of this matter and all of the previous documentation, the decision was made to terminate Dirgni's employment, effective January 18, 2018. The notice with supporting documentation is attached –this is a large file, so let me know if you do not receive it or are unable to open it – as is the standard separation paperwork. Please let me know if you have any questions.
>
> Genea O. Bell, Esq.
> Chief Legal and Human Resources Officers (GC Exh. 5)

The termination letter to Baker, signed by HR Director, Deborah Evans, stated, in relevant part:

> This letter is to inform you that your employment with Community Health Services is being terminated effective today, January 18, 2017 for poor performance including the failure to conduct yourself in a professional manner. Details are described in the Employee Warning Notice provided to you under separate cover. (GC Exh. 7.)

The "reply all" email from Bell attaching the discharge documents was sent to the Union as well as Baker, but it did not identify proposed bargaining times in response to Hermanson's prior statement that the Union would want to bargain about discipline.

The Employee Warning Notice that functioned as a discharge notice listed four prior warnings on its cover in support of the discharge decision: one oral warning, two written warnings, one of which is identified as a "final warning," and one "notice of termination," which is described as having been prepared, but not issued. The description of the current violation on the cover of the form states: Rudeness to Employees and Customers and Unsatisfactory Work Quality. The form notes that two earlier warnings for tardiness were not being considered in the decision. The Employee Warning Notice, dated January18 and signed by Howley, contains a page and half of descriptions of various conduct in support of the decision, including the warnings listed and various other documented and undocumented infractions by Baker, and attaches 13 exhibits, including O'Donnell's, Santiago's, and Baker's statements, and Bell's updated, contemporaneous notes from the interview with Baker. Although written in Howley's voice, the Employee Warning Notice was initially prepared by Bell.

Although Baker had received an Employee Warning Notice labeled as a "final notice" in March, 2016 for a failure to "meet job expectations with regard to capturing required documentation in the clinical charts," she was not discharged when two additional incidents occurred, these related to her interactions with coworkers in June 2016 and October 2016, which were deemed inappropriate or rude. Thus, the label "final notice" did not in practice mean that no other infraction would be tolerated. Although Howley testified that she decided to termination Baker in October 2016, and that she submitted paperwork to HR in furtherance of that determination, no such paperwork was produced pursuant to the Respondent's search in compliance with a trial subpoena, and I find that none existed. It became clear upon Howley's examination of the subpoenaed records that the October 2016 "Notice of Termination" was actually prepared in January as part of the preparation of paperwork in support of the discharge following the January 3 incident.

The General Counsel presented a detailed assessment of various inconsistencies, inaccuracies, and contradictions present in the paperwork supporting Baker's discharge notice, and, in particular, the rewriting and editing done to the witness statements at Howley's direction or perhaps at times by Howley herself. These changes included the addition of remarks about patients being present on January 3 on Santiago's, O'Donnell's, and Tran's written statements. I also note that in the various warning notices drafted by Howley and Howley's memo, Howley frequently uses the terms "rude", "demanding" or "unprofessional" "tone" or "demeanor" to describe Baker's communicative manner. O'Donnell used some of those same conclusory descriptors in her trial testimony and in her revised written statement, as did Santiago. Even in explaining that she does not consider herself a gossip, O'Donnell used the word "egregious" to describe things like the use of cell phone or leaving food in inappropriate places as things she would report to Howley. The shared vocabulary for these conclusory and judgmental descriptors suggests that there likely had been discussions among these coworkers consistent with the testimony and statements that insist that Baker's communicative manner was ongoing, contributing to their shared vocabulary.

Postdischarge Efforts to Engage in Bargaining.

After receiving Baker's discharge notice on January 18, Hermanson emailed Bell, expressing his surprise at receiving the notice in light of their prior discussion, requesting dates for bargaining, and requesting information. Bell offered days when she was available. Hermanson and Bell agreed to meet on the next day that they had scheduled a formal bargaining session for contract negotiations, January 24. This contract bargaining session was cancelled due to an illness of a key participant, however, and the parties did not meet to discuss Baker's situation for reasons the record does not establish. In the meantime, Hermanson filed the initial unfair labor practice charge in this case on January 23, which alleged that Baker was discharged because of her union activity and without the Respondent bargaining in good faith. (GC Exh. 1(a).)

At a subsequent contract bargaining session on February 16, the Union provided an initial, verbal proposal related to Baker's discipline, which was a proposal for her to be reinstated and made whole, explaining that it was important to the Union that Baker be returned to the workplace. The Respondent did not respond to the proposal, although it did respond to other

proposals made that day. The particular bargaining session was with a federal mediator and involved multiple issues. It was also limited in time, per the parties' established ground rules for bargaining. In any case, they did not discuss Baker's discipline. In a side conversation in the hallway with Counsel for the Respondent, Hugh Murray,[14] Hermanson raised the issue of the requirement that the Respondent bargain about the discipline, and stated that the Union wanted Baker reinstated. He explained that it was important to the Union's bargaining team and they wanted her back at the worksite. Murray asked if he meant *Alan Richey* cases; although Hermanson was not familiar with that case name he said, "yes." Murray replied that Hermanson did not understand the law and that the Respondent did not have an obligation to bargain. Hermanson disagreed and said that they "would let the Board decide, if that's the way it was going to be." (Tr. at 35−36.) Murray simply shrugged and ended the conversation.

On March 30, Bell sent Hermanson an email stating that she was "happy to continue bargaining over the discipline issued to Ms. Baker." (GC Exh. 10.) Notably, Bell framed the January 10 meeting as one where she and Hermanson "met to discuss potential discipline for Dirgni Baker," even though the record does not support a finding consistent with that characterization, that Bell was willing to talk about Baker's discipline at that time, or that she engaged in any bargaining at the January 10 meeting. (Id.) The email refers to the Respondent's obligation to provide notice and opportunity to bargain before imposing discipline, and further states that, "if the parties do not reach agreement, the employer may impose the selected discipline and then continue to bargain to agreement or impasse." (Id.) Although on its face the email offers to bargain over the already imposed discipline, it does not make any proposals to the Union or otherwise respond to the Union's prior request to reinstate Baker. (Id.)

Herman admitted that he did not respond to Bell's March 30 email. (Tr. at 38.) Hermanson believed that the Union had tried to bargain with the Respondent, first in Bell's office, and then at the contract negotiations table, and that the Respondent avoided engaging with them. Moreover, Baker had already been out of work for 3 months, and Hermanson did not believe the offer was a sincere attempt to bargain considering the Union's position with Baker out of work already. He believed, instead, that the email was a gesture made in response to the NLRB's investigation of the unfair labor practice charge that he had filed with the Board.

Credibility of Witnesses and Reliability of Documentary Evidence.

In addition to my findings above, I make the following credibility resolutions.

I find that the paper work is unreliable evidence to establish either the reasons for Baker's discharge or the factual circumstances surrounding the January 3 incident that prompted it. This includes the supporting documents, especially the warning notice associated with the purported October incident about which Howley admitted she decided to discharge Baker and made a recommendation to HR, when there was no documentation to support that recommendation, and Howley manufactured and back-dated the October warning notice for the purpose of supporting the Respondent's decision to discharge Baker on January 3. The Respondent's failure to timely produce pursuant to the General Counsel's subpoena the multiple emails and versions of the

[14] Murray did not testify, but he was present during this testimony and cross-examined this witness.

various documents in support of the January 3 incident and discharge contributes to my conclusion that these documents are not reliable. Whether they were purposely altered at the time to manufacture a stronger case against Baker, or the Respondent's witnesses forgot that they had multiple versions of several of the reports, Howley's, O'Donnell's, and Bell's inability to credibly or consistently explain how or why the documents were changed supports my determination that they are not reliable accounts of the incidents.

Howley's and Bell's inconsistent, conflicting, and sometimes hesitant testimony regarding who actually decided to terminate Baker's employment and when that decision was actually made, both stating the other had the final say, also contributed to my finding that they were not being wholly forthright in their testimony. At the January 10 meeting with Hermanson, Bell reported that she had not completed the investigation; however, she was already preparing the Employee Warning Notice later used to discharge Baker. Therefore, I find it dubious that Bell did not know that Howley had decided to discharge Baker at the meeting—she was waiting for the backup material to support the documentation of the discharge, not for a determination to be made. Bell's lack of candor in failing to inform Hermanson of the actual status of determinations regarding Baker's discharge contributes to my lack of confidence in Bell's version of the facts generally, and particularly, in her testimony that she considered the January 10 meeting to be bargaining. Bell's testimony and her March 30 email to Hermanson strike me as posthoc attempts to reframe the narrative regarding this meeting to try to make it meet the Respondent's obligation to bargain, when it simply does not.

Where their testimony conflicts with Respondent's witnesses, I credit Baker and Hermanson, who testified in straightforward, direct manners on both direct and cross examination. In contrast, Howley's testimony often contained hyperbole and exaggeration, revealing strong negative feelings related to Baker and Baker's status as an employee. For example, characterizing the brief statement made by Baker as "egregious" or "toxic," or labeling Baker as having a "toxic" personality was out of proportion to what actually happened on January 3. O'Donnell appeared to be an ally of Howley, supporting her statements with an insistence that reflected her distaste for Baker. In her demeanor, Bell appeared to be distant from the issues, even a bit unimpressed or bored with the hearing process. On cross examination, Bell occasionally revealed an uncooperative demeanor. Bell also required prompting by Counsel for the Respondent on direct examination with leading questions to flesh out some of the Respondent's narrative, making her testimony less reliable.

I rely on Bell's admission, however, that Howley, not Bell or anyone else, made the decision to discharge Baker. I reject the Respondent's argument that the decision was shown to have been collaboration between Bell and Howley, which is inconsistent with Bell's repeated statements that it was Howley's decision, not hers, and inconsistent with the preponderance of the record evidence. Although at one point Bell agreed that the decision was collaborative, this is only after leading questions and is not consistent with the totality of her testimony. Notably, Bell's testimony is consistent with Hermanson's that she told Hermanson at the January 10 meeting that Baker's discipline was not her decision to make.

B. Analysis

1. Legal framework

In *Total Security Management*, 364 NLRB No. 106 (2016), the Board clarified an employer's duty to bargain before disciplining individual employees, when the employer exercises discretion over whether and how to discipline employees, but does not alter broad preexisting standards or policies during the timeframe when a union has been certified but the parties have not entered into an initial collective-bargaining agreement. Id. slip op. at 2. After employees have voted to be represented by a union but before the employer and union have entered into a complete CBA or an agreement covering discipline, the duty to bargain about the discretionary implementation of serious discipline attaches. Id. *Total Security Mgmt.* requires the employer to give prior notice and opportunity to bargain about discretionary decisions to implement serious discipline. Id. The Board describes serious discipline as actions that have an inevitable and immediate impact on the employees' tenure, status, or earnings, such as suspension, demotions, or discharges. Id., slip op. at 4. The Board contrasts serious discipline with most warnings, corrective actions, or counselings that are not part of an automatic progressive disciplinary system, which do not trigger an obligation to engage in preimposition bargaining. The Board recognizes an exception to this preimposition bargaining obligation when a situation presents exigent circumstances, where an employer has a reasonable, good-faith belief that an employee's continued presence in the workplace poses a serious imminent danger to the employer's personnel or business. Id. slip op. at 11.

This case presents certain questions regarding the appropriate application of the Board's holding in *Total Security Mgmt.*, above, and to some degree, that holding's meaning. These include questions raised about limitations on the pre-discipline bargaining obligation addressed in *Total Security Mgmt.*, Section 8(a)(5) of the Act defines that it is unlawful for an employer "to refuse to bargain collectively with the representatives of [its] employees . . . . " Making unilateral changes to terms and conditions of employment circumvents the employer's duty to negotiate and frustrates the objectives of Section 8(a)(5). *NLRB v. Katz*, 369 U.S. 736 (1962). Section 8(a)(5) and 8(d) require that bargaining be performed in good faith, which is defined as more than just going through the motions, but requires parties to approach bargaining with a "serious intent to adjust differences and to reach an acceptable common ground." *NLRB v. Truitt Mfg*, 351 U.S. 149, 155 (1956). Good-faith bargaining requires timely notice and opportunity to bargain regarding a proposed change to terms and conditions of employment. See *First National Maintenance*, 452 U.S. 666, 682 (1981). If an employer fails to provide timely notice and opportunity to bargain and announces a change as a done deal, or otherwise evidences that it has no intention to of changing its mind or altering its proposed change, the Board will find that the employer's proposal constitutes a fait accompli. See, e.g., *Tesoro Refining & Marketing Co*., 360 NLRB 293, 294 (2014); *Toma Metals, Inc.*, 342 NLRB 787, 787 fn. 1 (2004); *UAW-DaimlerChrysler National Training Center*, 341 NLRB 431, 433 (2004); and *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 107 (1982), enfd. 722 F.2d 1120 (3rd Cir. 1983). To the extent the Board described limitations on the nature or extent of the bargaining obligation at the pre-discipline stage in *Total Security Management*, those limitations must be considered within the basic tenets of Section 8(a)(5) and Section 8(d) that require that bargaining be entered into in good faith.

2. Did the Respondent violate Section 8(a)(5) by failing to give prior notice and opportunity to bargain with the Union before implementing the paid suspension? (Complaint pars 10, 12(a), 12(b), 13, 14, and 16)

The Respondent admits and I find that the Respondent did not provide the Union with prior notice or opportunity to bargain before Howley suspended Baker indefinitely on January 3. Rather, the Respondent argues that, because Baker was ultimately put on administrative leave after she was sent home, the suspension was not "serious discipline" as contemplated by *Total Security Mgmt.*, above, slip. op. at 8, because it lacked "an inevitable and immediate impact on the employee's tenure, status, or earnings." Therefore, the Respondent argues, no preimposition bargaining obligation attached. The Respondent relies on the Board's discussion in *Total Security Mgmt.* that identifies "suspensions, demotions, and discharges" as the kind of discretionary discipline that triggers a preimposition bargaining obligation, contrasted with "most warnings, corrective actions, and counselings" that generally do not trigger the bargaining obligation. Id. The General Counsel argues that a paid suspension is also serious discipline within the meaning of *Total Security Mgmt.,* because, although there may not be a direct or immediate financial loss to the employee, taking the employee out of the workplace indefinitely may have serious consequences to an individual's status, tenure, and earnings (due to potential loss of overtime or other opportunities) and may have negative consequences to the bargaining unit and to the Union's effectiveness as a representative at a particularly vulnerable period before the first contract is reached.

In this case, however, I find it unnecessary to reach the broader question of whether a paid suspension pending a disciplinary investigation that has no obvious financial consequence is "serious discipline" within the meaning of *Total Security Mgmt.*, because, I find that Howley sent Baker home on January 3 with the full intention of discharging her, and that the subsequent period of 2 weeks of administrative leave were part and parcel of the Respondent's effort to discharge Baker. The Respondent used the time Baker was on administrative leave to bolster, and, even to manufacture, a paper trail to support Howley's predetermination to discharge Baker. The suspension was a pretextual ruse to lend some facial credence to Howley's decision to discharge Baker, and not a period of investigation to determine what happened or to fully consider what actions to take, as the Union and Baker were led to believe. The sham nature of the investigation supports my finding below that the Respondent never demonstrated *any* intention to bargain in good faith with the Union about the discharge. The Respondent cannot rely on its charade of an investigation to establish that it met its obligation to bargain with the Union about the decision to discharge Baker before it implemented the discharge, when the suspension was itself a ruse to effectuate the discharge.

The record fails to provide any explanation for why no action was taken on Howley's October 2016 decision to discharge Baker, two months before action was taken. Howley's stated belief that she submitted paperwork to HR expecting to implement a discharge was not supported by the subpoenaed documents produced at the hearing. Indeed, Howley completed and backdated the purported October warning notice/discharge notice in January when she was preparing the paperwork for the January discharge. There is no documentary evidence to support her claim that the warning was prepared in October. Whatever the reason for the Respondent's lack of follow through of Howley's October decision to discharge Baker, Howley admittedly remained

frustrated that Baker was still employed. The exaggerated quality of some of Howley's testimony suggested that she held some hostility toward Baker. When O'Donnell presented herself as upset on January 3 and then reported, reluctantly, that Baker had said something that O'Donnell construed as rude within a context of her frustration about Salehi's request to change a patient's schedule, Howley seized the opportunity to implement her prior decision to discharge Baker.

The record does not establish through comparative discipline evidence that it was consistent with the Respondent's practice to send an employee home, and put the employee on administrative leave pending an investigation, following an allegation that she made a snippy comment to a coworker, or otherwise engaged in a minor communication indiscretion that management deemed to be unprofessional or rude. I conclude from the lack of this evidence, that none exists. Moreover, some evidence was presented by the General Counsel suggesting that individuals were not disciplined as harshly, despite their infractions and behavior seeming to be more severe than Bakers. (See GC Exhs. 13, 14, and 15.)

Thus, sending Baker home on January 3, and putting her in a paid, administrative leave status on January 4, were steps taken toward the predetermined discharge. Therefore, the Respondent began the process of discharging Baker on January 3, completing it on January 18. Labeling this action a paid suspension pending investigation on January 4 does not change the reality of Howley's decision.

Therefore, I find that the Respondent violated Section 8(a)(5) by failing to give the Union prior notice and an opportunity to bargain about the decision to send Baker home on January 3, when it began its administrative process of effectuating the predetermined discharge.

3. Did the Respondent violate Section 8(a)(5) by failing to give prior notice and opportunity to bargain with the Union before implementing the discharge or by failing to bargain in good faith?

(Complaint pars 11, 12(a), 12(b), 13, 14, and 16)

I have found above that the Respondent failed to provide the Union with prior notice and opportunity to bargain when, on January 3 it sent Baker home and began implementing the decision to discharge her. Even if the suspension was not shown to be a ruse to bolster the evidence for the discharge and did not demonstrate that the decision to discharge and the imposition of the discharge began on January 3, however, I would find that the Respondent failed to give notice and opportunity to bargain about the discharge before January 18.

The January 4 Memo

On January 4, a day after Baker had been sent home following her interaction with O'Donnell during the group discussion about Dr. Salehi's schedule, Bell sent the Union and Baker an email attaching a memo from Howley apprising Baker that she had been put on administrative leave, "pending further investigation into the matter." (R. Exh 1.) This documentation does not provide the Union with prior notice or opportunity to bargain about Baker's discharge. First, the brief incident between Baker and O'Donnell did not require much investigation. Howley had already talked to O'Donnell, Santiago, Baker, and possibly Salehi,

before she sent Baker home, so there was really no investigation left to do. Instead, it is clear from the record that Baker was left at home while Howley was accumulating the paperwork used to support her decision to discharge Baker. In this important respect, the memo is misleading to the Union and evidences the Respondent's bad faith.

Second, the Respondent provided no evidence or explanation for the need to send Baker home on January 3, considering the simple nature of the purported infraction. There is no suggestion or argument that Baker's presence posed an imminent danger or any other cause to keep Baker out of the workplace that might have justified removing her from the workplace. If the Respondent were truly "investigating" whether or how to discipline Baker based on the cumulated effect of her prior discipline and the January 3 brief exchange with O'Donnell, it remains unexplained on what basis she was sent home, and the Respondent failed to establish a reason on this record. It makes more sense that sending her home was, in fact, part of the punishment for offending O'Donnell in light of Howley's prior intent to discharge Baker. In this sense too, the framing of the removal of Baker from the workplace as part of an investigation was an insincere masking of Howley's purpose, which was to discharge Baker.

Third, nowhere in this memo does the Respondent notify the Union of its intent to discharge Baker. Although it does remind Baker that she had received a "final warning" in the past, by stating it was still investigating, the Respondent nullifies any suggestion that this memo served as notice and opportunity to bargain about proposed discipline of Baker. Moreover, on this record, the Respondent has stipulated that the discipline was discretionary in nature, and therefore not part of an automatic progressive discipline system, which is consistent with record as a whole. So the fact that Baker had been given a form that said "final warning" in the past, is not sufficient notice to the Union of the Respondent's intent to discharge Baker to meet a notice or bargaining obligation.

Finally, the Union's response to the January 4 memo is consistent with a lack of actual notice of proposed discipline. Hermanson called Bell to ensure that he would be permitted to be present at any investigatory interview with Baker. Hermanson represented Baker as if an investigation was ongoing, not as if he had received notice of the Respondent's intent to discharge Baker. Thus, the January 4 Memo does not constitute prior notice or opportunity to bargain about proposed discipline.

The January 10 meeting

At the January 10 meeting, Bell rejected Hermanson's attempts to begin engaging in preliminary bargaining by dodging his suggestions of providing Baker with training or an EAP referral, if discipline were called for. Bell "repeatedly" explained to him that she was not the decision-maker. This, too, left Hermanson (and relatedly Baker) under the impression that no decision had been made. It, therefore, cannot meet the Respondent's obligation to give the Union prior notice and opportunity to bargain about proposed serious discipline. Just physically being in the same room with the Hermanson, in the absence of the Union having been told it was meeting to bargain over serious discipline, does not take the place of engaging in sincere, preimposition bargaining, as required by *Total Security Mgmt*, above.. Moreover, in the meeting, Hermanson stated that if they were planning to discipline Baker, he demanded bargaining about

it. At that juncture, Bell did not say, well we propose such and such. She just deflected the demand. I have considered that Bell informed Howley on January 9, the day before the meeting with Baker and Hermanson, that she was working on Baker's discipline notice. I infer from this communication that a Bell knew that a decision had been made to impose discipline, and that she required the materials to effectuate that decision. This contributes to my conclusion that Bell was disingenuous with Hermanson and Baker on January 10 when she indicated that her investigation was ongoing. Therefore, the January 10 meeting failed to constitute prior notice and opportunity to bargain about Baker's discharge.

The period from January 10 to January 18

It is undisputed that the Respondent did not give any other written or verbal notice of proposed discipline or notice of a decision to implement discipline to the Union between the January 10 meeting and the final notice advising Baker that she had been discharged on January 18. Bell had the opportunity to clarify the status of Baker's discharge (or proposed discharge) in emails she exchanged with Hermanson that only stated that the "investigation" was taking longer to complete. Hermanson was left to believe he was waiting for information, or perhaps a proposed decision, not a unilateral imposition of the serious discipline of Baker's discharge. Bell's failure to frankly and clearly notify Hermanson that the Respondent was contemplating or proposing discharge as the discipline, even in the absence of Bell's receipt of all the paperwork from Howley, purposefully "hid the ball" from the Union regarding what the Respondent was preparing to do. While Hermanson awaited Bell's promised response following a purported investigation, the Respondent prepared and implemented its discipline, never providing the Union with notice or opportunity to bargain about it.

By discharging Baker without giving the Union prior notice of the proposed action, the Union was presented with a fait accompli on January 18. See, e.g., *Tesoro Refining & Marketing Co.*, above.. A final decision was implemented before the Union was advised of the details of the investigation. By use of the "reply all" email on January 18 to Baker and Hermanson, Bell put the Union in the awkward position before its member, Baker, of seeming to have no voice in the decision and no ability to influence the decision, about which it was entitled to bargain. Although the Union made an attempt to bargain about this issue at its contract negotiation session in February, the Respondent did not respond. The Respondent's assertion that the Union failed to engage in bargaining is unpersuasive, as, based on the Respondent's unilateral actions, the Union was in a greatly weakened position from which to bargain. The filing of the underlying charge in this case, and the Union's demands to bargain, provide ample support for the Union's continued interest in pursuing its right to bargain about Baker's discipline. When presented with a fait accompli, the Union was not required to go through the motions of bargaining, having already experienced the Respondent's unlawful failure to bargain. See *Gulf States Mfg. v. NLRB* 704 F.2d 1390, 1397 (5th Cir. 1983) (When faced with a fait accompli, a union cannot be held to have waived its right to bargain).

The Respondent's actions constituted unlawful, bad-faith bargaining, because they reflect an absence of any genuine intent to reach agreement with the Union, but instead demonstrate a purposeful circumvention of its obligation to bargain with the Union. Any limits to the Respondent's bargaining obligation referred to in *Total Security Mgmt.*, above, do not disturb the

fundamental doctrine set forth in Section 8(a)(5) and 8(d) requiring that bargaining be done in good faith, which includes the requirement that bargaining be entered into with a sincere intent to try to reach a mutually agreeable resolution. Bargaining is not just for show. Here, under all the circumstances, both the investigation and the subsequent "meeting" with the Union were charades, demonstrating a complete absence of any intent to engage with the Union regarding the substance of the purported conduct (or performance) issue Baker was accused of.

3. Did the Respondent establish that the Baker's discharge was "for cause"?

As I have found that the evidence presented by the Respondent in support of its decision to discharge Baker effective January 18 was not reliable, the Respondent has not established on this record that Baker was discharged for cause. I also have found that the purported investigation of the Baker's alleged misconduct was not a true investigation, but a sham or charade designed avoid dealing in good faith with the Union. Although there is no 8(a)(3) violation alleged in this complaint, I have considered that the Respondent's explanations for discharging Baker in light of the sham investigation that included the doctoring of records, the misrepresentations made to the Union during the process, and the exaggerated hyperbole invoked to explain the reasons for the discharge present some evidence in support of a finding of pretext in the context of a discrimination claim. See *State Equipment, Inc.*, 322 NLRB 631 (1996) (mere fact that Employer attempted to manufacture a defense to its discharge is convincing evidence that it had no legitimate reasons); *National Football League Mgmt. Council, et al.* 309 NLRB 78 (1992); and *Bourne Manor Extended Health Care Facility*, 332 NLRB 72 (2000) (an assertion of good faith was not supported when the employer failed to conduct a proper and complete investigation). The Board may infer from a finding of pretext that the real reason for the Respondent's actions are unlawful. *Bourne Manor*, above. The record establishes that Baker was a known supporter of the union, in particular, due to her participation as a member of the bargaining team. Whether the real reason for the discharge was antiunion animus, or some other reason, lawful or unlawful, the Respondent has failed to demonstrate on this record what the real reason was, and therefore, the Respondent has failed to show that the discharge was for cause.[15]

I find that the Respondent has failed to establish that Baker was fired for cause within the meaning of Section 10(c) of the Act.

The Respondent argues that Section 10(c) of Act puts the burden of proof on the General Counsel to establish that a discharge was not for cause before the Board can impose a reinstatement or backpay remedy. In particular, the Respondent argues that the Board improperly shifts the burden of proof in *Total Security Mgmt.*, above. Consistent with this argument, the Respondent asserts that reinstatement and backpay is foreclosed in this case, because the General Counsel has not shown that the Respondent's reason for the discharge violates the Act.[16] In *Total*

[15] Moreover, the limited comparative discipline evidence on this record establishes that the Respondent has never discharged an employee under similar circumstances as Baker's, and has retained employees who exhibited arguably more serious behavior. (See GC Exhs. 13, 14, and 15) Baker's own history of discipline further reveals that her series of infractions were not sufficient to remove her before the admittedly minor incident on January 3. (See GC Exh. 6)

[16] Although I have found above that there is some evidence that may support a Section 8(a)(3)

Security Mgmt., above, slip op. at 10-11, the Board addressed this argument and clarified that, in this context, it was appropriate to shift the burden of proof to the Respondent to show, as a defense to the 8(a)(5) failure to bargain violation that the serious discipline unlawfully imposed without bargaining was issued "for cause." The Respondent disagrees with the Board's reasoning and its determination to shift the burden of proof to the Respondent in this manner. I am obliged, of course, to apply the Board's precedent. Therefore, the Respondent's argument lacks.

C. Findings Related to Remedial Issues

The General Counsel opted to litigate the compliance specification with the complaint on the merits in this case. (GC Exh. 1(e).) I denied the Respondent's pretrial motion to sever the compliance proceedings from the trial on the merits for the reasons stated in my October 30, 2017 Order. (See GC Exh. 21.) Therefore, I make the following findings related to the compliance-related issues.

Compliance proceedings restore the status quo ante existing before the unfair labor practice occurred. *Herbert Distributions, Inc*., 344 NLRB 339, 341 (2005). An unfair labor practice finding is presumptive proof of backpay liability. *Beverly California Corp.*, 329 NLRB 977, 978 (1999). The General Counsel has the burden to establish the gross backpay amount due, and must show only that the gross backpay calculations are reasonable and on-arbitrary. *Performance Friction Corp.*, 335 NLRB 1118 (2001). The evidentiary burden then shifts to the Respondent to reduce liability. *Church Homes, Inc.*, 349 NLRB 829, 838 (2007). The Board orders a make-whole remedy as part of a restoration of the status quo when, like here, the Respondent has made unilateral changes in employees' terms and conditions of employment without bargaining with the union. See, e.g., *Total Security Mgmt.*, above; *UPS Supply Chain Solutions, Inc.*, 364 NLRB No. 9 slip op. at 1 (2016); *Fiberboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 217 (1964); *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 179 (1941).

Many material facts are not in dispute. The parties stipulated that at the time of her suspension and discharge, Dirgni Baker was earning $13.20 per hour, and that her pay would have remained at that level until July 29, 2017, when it would have risen to $14.02 per hour. (Jt. Exh. 1, GC Exh. 20.) The parties further stipulated that, immediately preceding her suspension and discharge, Baker regularly worked 40 hours per week, and that, but for her discharge, Baker would have earned an average of $528 (gross) per week until July 29, 2017, and since July 29, 2017, she would have earned on average $560.80 (gross) per week. (Jt. Exh. 1, GC Exh. 20.) There were no interim expenses alleged. The only interim earnings accounted for were $1010 from a shortly held interim employment. (Id.)

The Respondent does not dispute the formula used by the General Counsel to calculate the backpay; it does dispute that the alleged backpay amounts are correct, because it disputes the length of the backpay period. The Respondent argues that Baker is not owed backpay and reinstatement because either she was fired for cause, or she failed to mitigate damages by voluntarily leaving subsequent employment following her discharge without justifiable reasons,

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allegation on this record, the General Counsel did not pursue that allegation, and I reach no conclusion regarding whether Respondent's actions violated Section 8(a)(3).

or by failing to diligently search for work. I have found above that the Respondent failed to show that Baker was discharged for cause, and have rejected that defense. As discussed below, the Respondent's arguments related to the tolling or limiting of backpay are without merit.

Baker's Early Loss of Interim Employment

Following her discharge, effective January 18, Baker sought and obtained interim employment about a week later as a medical assistant in another clinic, Kathy's Urgent Care. One of Baker's daughters was employed at that clinic. In this position, she earned $15 per hour, compared to the $13.20 she was earning at CHS. Baker testified that she was unable to retain this employment, however, because the clinic changed her hours to a schedule that she could not cover due to her family obligations. (GC Exh. 15.) Initially, Baker was assigned to work from 10 a.m. to 6 p.m., Monday through Friday, and to work every other weekend, with some days off during the week. On February 21, her supervisor called her to the office and told her that they required her to work earlier, from 8 a.m. to 4 p.m. Baker is the mother of six children, three of whom were still in grade or middle school. Her routine was to drop the three school-aged children in the morning at 8:15 a.m. Her older daughter, a college student, picked them up after school. In order to accommodate a starting time of 8 a.m., she would have to pay $10 per child per day, or $30 per day, to drop the children at school by 7:45 a.m. Baker's drive to Kathy's Urgent Care took about 20 to 25 minutes, so even if she had been able to pay the $30 fee each day, she still would not be able to get to the job by 8 a.m. She determined that she was unable to retain this position at the clinic with the changed schedule under the circumstances, and she resigned after only about 2 weeks of work.

In contrast, Baker was able to drop her children at school and get to her job at CHS on time without the need to pay for before-school care.

The Respondent urges me to cut off its backpay liability at February 21, suggesting that Baker failed to meet the job expectations of her subsequent employer. The Respondent cites no legal precedent for this interpretation of the facts. The Board has held that a discriminatee's deliberate or gross misconduct resulting in discharge from interim employment, or a deliberate courting of a discharge will toll a Respondent's backpay obligation. See, e.g., *Nationwide*, 297 NLRB 454 (1989), and *Cassis Management Corp.*, 336 NLRB 961 (2001). Here, however, the Respondent has failed to show that Baker engaged in the kind of conduct that would cause her make-whole remedy to be tolled. Baker obtained a job immediately after being discharged from CHS. This job, however, was not comparable to her job at CHS in that the interim employer's required schedule became unmanageable. The $30 charge per day to accommodate her childcare needs was a charge she did not have at CHS. As she was earning $15 per hour, I find that the burden of paying $30 per day for early morning childcare was a significant one, and I find that it was reasonable for Baker to turn down that work. I note that it is commendable that Baker attempted to perform the job soon after her discharge. In any case, the Respondent did not establish that Baker's inability to retain this interim position caused her backpay to be tolled.

Baker's Search-for-Work Efforts Following Loss of Interim Employment

Baker testified that she regularly applied for work at medical centers and hospitals in the Hartford area. Because she did not have a license, but only a certificate, to work as a medical assistant, she was less likely to be selected for many of the jobs she found listed at these entities and through on-line systems. Baker testified that she received unemployment insurance, and sought work to meet her related obligations. Baker interviewed for a job during the timeframe of the hearing. The Board reviews the entire backpay period to determine whether a reasonable search for work has occurred, under all the circumstances. *Cornwell Co*., 171 NLRB 342, 343 (1968). It is well settled that it is the Respondent's burden to show that backpay should be reduced because of a discriminatee's willful loss of interim employment. Although the Respondent attempted to show that there was significant medical assistant work available in the area, the record was insufficient to establish that, under the circumstances, including Baker's non-licensed status, Baker willfully failed to obtain a medical assistant job. It is not sufficient for the Respondent to merely show that jobs existed, but they must be substantially equivalent jobs, including pay, working conditions, commutes, work locations, hours, shift scheduling and benefits. *Teamsters Local 25*, 366 NLRB No. 99, slip op. 2 (2018). Here, I find that Baker engaged in a continuing search for work and that the Respondent failed to show that she unreasonably failed to obtain employment. Therefore, I conclude that Baker's backpay is not limited or lessened based on her lack of interim employment after February 21, 2017.

Respondent's March 30 Email to the Union

As discussed above, I find that, under the circumstances, the Respondent's March 30 email from Bell to Hermanson purportedly offering to "continue" bargaining about Baker's discharge was not made in good faith, and not made in the absence of prior unlawful failures to bargain in good faith. Therefore, the Union's failure to respond to this email does not toll the backpay period. When presented with a fait accompli, the Union is not required to engage in bargaining about the unilateral change until the status quo ante has been restored. See, e.g., *Gulf States Mfg. v. NLRB*, above.

Quarterly Backpay Calculations and Interest From Discharge to Hearing

Based on the parties' stipulations and my rejection of the Respondent's arguments that backpay should be limited or tolled, as discussed above, I make the following findings. There were no interim expenses included in the General Counsel's backpay calculation. (Jt. Exh. 1, GC Exh. 20.)

1. First Quarter, 2017 (partial quarter)

Week Ending	Gross Backpay	Quarter Interim Earnings	Net Backpay
1/21/17	$ 208		
1/28/17	528		
2/4/17	528		

2/11/17	528		
2/18/17	528		
2/25/17	528		
3/4/17	528		
3/11/17	528		
3/18/17	528		
3/25/17	528		
4/1/17	528		
TOTAL	**$ 5488**	**$ 1010**	**$ 4478**

2. Second Quarter, 2017

Week Ending	Gross Backpay	Quarter Interim Earnings	Net Backpay
4/8/17	$ 528		
4/15/17	528		
4/22/17	528		
4/29/17	528		
5/6/17	528		
5/13/17	528		
5/20/17	528		
5/27/17	528		
6/3/17	528		
6/10/17	528		
6/17/17	528		
6/24/17	528		
7/1/17	528		
TOTAL	**$ 6864**	**$ 0**	**$ 6864**

5

3. Third Quarter, 2017

Week Ending	Gross Backpay	Quarter Interim Earnings	Net Backpay
7/8/17	$ 528		
7/15/17	528		
7/22/17	528		
7/29/17	561		
8/5/17	561		
8/12/17	561		
8/19/17	561		
8/26/17	561		
9/2/17	561		

9/9/17	561		
9/16/17	561		
9/23/17	561		
9/30/17	561		
TOTAL	**$ 7192**	**$ 0**	**$ 7192**

4. Fourth Quarter 2017 (partial quarter)

Week Ending	Gross Backpay	Quarter Interim Earnings	Net Backpay
10/7/17	$ 561		
10/14/17	561		
10/21/17	561		
10/28/17	561		
11/4/17	561		
11/11/17	561		
TOTAL	**$ 3365**	**$ 0**	**$ 3365**

Total net backpay from January 18, 2017, to November 11, 2017, is $21,899. Daily compounded interest through November 11, 2017, is $265. **Total Backpay, Expenses and Interest from January 18 to November 11, 2017, is $22,164.** As appropriate, the Regional Director may adjust the total backpay amount for Fourth Quarter 2017, which is a partial quarter, to account for any additional lost wages and/or interim earnings.

Backpay since the Close of Trial Record

On this record, the Respondent's backpay obligation is ongoing. Consistent with the Board's practice I shall order the Respondent to make Baker whole for the period after November 11, 2017, in the manner described in the remedy section. Any changed circumstances not addressed in this decision will need to be addressed by the Regional Director in further compliance proceedings.

CONCLUSIONS OF LAW

By failing to provide the Union with notice and opportunity to bargain before implementing serious discipline of discharge of employee Baker on January 3, 2017, effective January 18, 2017, and by failing to bargain in good faith with the Union about Baker's discipline, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act

The Respondent, having unlawfully discharged Dirgni Baker, must offer her reinstatement and make her whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010), minus tax withholdings required by Federal and State law.

In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), the Respondent shall also compensate the discriminatee for any search-for-work or interim employment expenses regardless of whether those expenses exceed her interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. The Respondent shall also be ordered to expunge from its files any and all references to the discharge of Dirgni Baker, and notify her in writing that this has been done and that evidence of the unlawful action will not be used against him in any way.

The Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters, in accordance with *Don Chavas LLC d/b/a Tortilla Don Chavas*, 361 NLRB 101 (2014). The Respondent shall also compensate the discriminatee for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *AdvoServ of New Jersey, Inc*., 363 NLRB No. 143 (2016).

To make the discriminatee whole for the period of time from January 18, 2017, to November 11, 2017, the Respondent shall pay her $22,164, plus interest since November 11, 2017, minus tax withholdings required by Federal and State Law. For the backpay period from November 12, 2017, to the present, including any appropriate adjustments to the Fourth Quarter 2017 calculation, which is only partially accounted for in this record, the Respondent shall make the discriminatee whole as described above.

On these findings of facts and conclusions of law based on the entire record, I issue the following recommended Order.[17]

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Community Health Services, Inc., Hartford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Imposing serious discipline (e.g., suspension, discharge, demotion) upon bargaining unit employees without first notifying the employees' collective-bargaining representative and providing the bargaining representative with the opportunity to bargain over the discipline to be imposed or proposed to be imposed, when an initial collective-bargaining agreement has not been agreed to or is not yet in effect.

(b) Failing to bargain in good faith with the American Federation of Teachers, CT AFT, AFL−CIO, (the Union) as the exclusive representative of the employees in the unit described below in paragraph 2(a) concerning terms and conditions of employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment by providing prior notice and opportunity to bargain before implementing serious discipline during the period after a union is recognized until a first contract is achieved or agreement is reached regarding a method for dispute resolution:

> All full-time and regular part-time Dental Assistants and Medical Assistants employed at the Employer's 500 Albany Ave., Hartford, Connecticut facility; but excluding all other employees, Medical Assistant Receptionists, Dental Assistant Receptionists, Doctors, Clinicians, clerical and other non-professionals, and guards, professional employees, and supervisors as defined in the Act.

(b) Rescind the discharge of Dirgni Baker.

(c) Within 14 days from the date of the Board's Order, offer Dirgni Baker full reinstatement to her former job or, if her job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(d) Make Dirgni Baker whole, with interest, for any loss of earnings and other benefits suffered as a result of her unlawful discharge, in the manner set forth in the remedy section of the decision.

(e) Compensate Baker for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director of Region 1, within 21 days of the date the

amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(f) Compensate Baker for her search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings

(g) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify Baker in writing that this has been done and that the discharge will not be used against her in any way. This does not prevent Respondent from disciplining Baker after complying with this Order and complying with its bargaining responsibilities pursuant to Section 8(a)(5) and (1) of the Act.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director for Region 1 may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

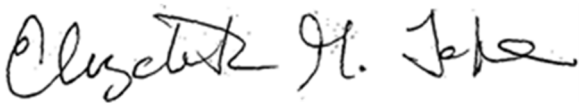
(i) Before imposing discipline, notify the Union and provide it with an opportunity to bargain over any proposed discipline that may be imposed for the alleged misconduct that led to the prior decision to discharge Dirgni Baker, after rescinding the discharge, reinstating Baker, making her whole, and restoring the status quo in the manner described herein.

(j) Within 14 days after service by the Region, post at it Hartford Connecticut facilities, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employee are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 3, 2013.

(k) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[18] If this order is enforced by a judgment of the a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated: Washington, D.C. January 31, 2019.



Elizabeth M. Tafe
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT impose serious discipline (e.g., suspension, discharge, demotion) upon you without first notifying your collective-bargaining representative and providing the bargaining representative with the opportunity to bargain over proposed discipline before it is imposed, when an initial collective-bargaining agreement has not been agreed to and is not in effect.

WE WILL NOT fail to bargain in good faith with the American Federation of Teachers, CT AFT, AFL−CIO (the Union) as the exclusive representative of the employees in the unit described below concerning terms and conditions of employment:

All full-time and regular part-time Dental Assistants and Medical Assistants employed at the Employer's 500 Albany Ave., Hartford, Connecticut facility; but excluding all other employees, Medical Assistant Receptionists, Dental Assistant Receptionists, Doctors, Clinicians, clerical and other non-professionals, and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union concerning terms and conditions of employment for our employees in the bargaining unit described above.

WE WILL rescind the discharge of Dirgni Baker.

WE WILL offer Dirgni Baker full reinstatement to her former job or, if her job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Dirgni Baker whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge, and within 3 days thereafter WE WILL notify Baker in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL compensate Dirgni Baker for the adverse tax consequences, if any, of receiving a lump sum backpay award, and WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

WE WILL, before imposing any discipline, notify the Union and provide the Union with an opportunity to bargain over any proposed discipline that may be imposed for the alleged misconduct that led to the prior decision to discharge Dirgni Baker, after rescinding the discharge, reinstating Baker, making her whole, and restoring the status quo in the manner described above.

COMMUNITY HEALTH
SERVICES, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Offices set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Region 1
10 Causeway Street, 6th Floor, Boston, MA 02222–1072
(617) 565-6700, Hours: 8:30 a.m. to 5 p.m.
SubRegion 34
Ribicoff Federal Building and Courthouse,
450 Main Street, Suite 410, Hartford, CT 06103-3022
(860) 240-3522, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/01-CA-191633 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (857) 317-7816.